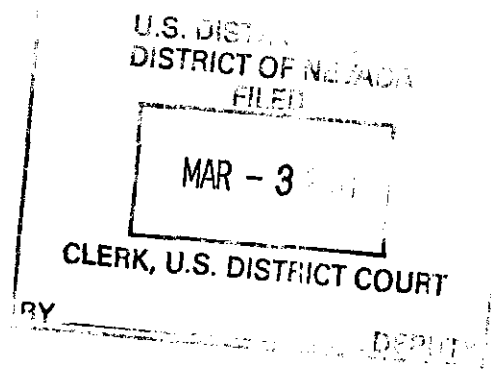


1 THOMAS R. BROOKSBANK, ESQ.  
2 Nevada Bar 2674  
3 Brooksbank & Associates  
4 689 Sierra Rose Drive Ste A-2  
5 Reno NV 39511  
6 775/329-5230

Attorneys for Plaintiff



7 UNITED STATES DISTRICT COURT  
8 DISTRICT OF NEVADA

9 SALLY A WEILAND-BOGOGER,

10 Plaintiff,

11 vs.

12 PATENAUDE & FELIX APC,

13 Defendant

Ca:

3:06-cv-00113

COMPLAINT AND DEMAND FOR JURY  
TRIAL

14  
15 Plaintiff Sally A. Weiland-Bogoger, by and through her attorney Thomas R. Brooksbank,  
16 Esq., Brooksbank & Associates, complains and alleges as follows:

17 I. INTRODUCTION

18 1. This is an action pursuant to the Fair Debt Collection Practices Act ("FDCPA"). 15  
19 U.S.C. §1692 et seq.

20 II. JURISDICTION AND VENUE

21 2. This Court has jurisdiction under 15 U.S.C. §1692k(d) and 28 U.S.C. §1331.

22 III. PARTIES

23 3. Plaintiff, Sally A. Weiland-Bogoger, is a resident of Nevada and is a "consumer" as  
24 defined by the FDCPA. 15 U.S.C. §1692a(3).

25 4. Defendant is a law firm in the business of collecting consumer debts and is a  
26 "debt collector" as defined in 15 USC §1692a(6).  
27  
28

IV. FACTS

5. Prior to July 26, 2005, Bank of America retained defendant to collect a consumer debt allegedly owed the bank by the plaintiff.

6. On July 26, 2005, defendant wrote and mailed plaintiff a dunning letter, a copy of which is attached hereto as Exhibit "A". The dunning letter included a false, deceptive and misleading statement saying, "If you wish to eliminate further legal action..." even though no legal action had been instituted and/or was pending. (Emphasis added.)

7. On August 2, 2005, plaintiff responded to the defendant's dunning letter by requesting that defendant "Cease and Desist" further collection activity. A copy of plaintiff's August 2, 2005, letter is attached hereto as Exhibit "B".

8. Rather than honoring plaintiff's request to cease and desist, on October 27, 2005, defendant communicated with plaintiff by letter and made further efforts to attempt to collect the debt. Defendant's October 27, 2005, letter is attached hereto as Exhibit "C".

9. In response to defendant's October 27, 2005, letter, plaintiff sent defendant a second "Cease and Desist" letter a copy of which is attached hereto as Exhibit "D".

10. Instead of honoring plaintiff's second request to cease and desist, defendant telephoned plaintiff on January 16, 2006, January 29, 2006, January 31, 2006, February 2, 2006, and February 19, 2006.

V. FDCPA VIOLATIONS

11. In the course and scope of attempting to collect a consumer debt from plaintiff, defendant violated the FDCPA in the following respects:

(a) communicating with the consumer after the consumer has notified the debt collector in writing that the consumer wishes the debt collector to cease further communication with the consumer in violation of 15 U.S.C. § 1692c;

1 (b) making a false, deceptive and misleading statement in attempting to collect a  
2 debt by inferring that legal action had been instituted or was pending against the plaintiff when it  
3 had not, in violation of 15 U.S.C § 1692e.

4 12. As a direct and proximate cause of the defendant's FDCPA violations plaintiff is  
5 entitled to recover actual damages, statutory damages, attorneys fees and costs.

6 VI. STATE LAW CLAIMS

7  
8 13. The foregoing acts violated NRS Chapter 598 in the following respects:

9 a. NRS 598.0915(15) knowingly making a false representation in a transaction;

10 b. NRS 598.0923(3) violating a state or federal statute relating to the sale or  
11 lease of goods or services; and

12 c. NRS 598.0923(4) using coercion, duress or intimidation in a transaction.

13 14. NRS 41.600 provides plaintiff with a private right of action for consumer fraud, as  
14 defined by a violation of NRS 598.0915 to 598.0925 inclusive, entitling plaintiff to damages, costs  
15 and attorney's fees.

16 15. The actions of the defendant are statutorily defined as "consumer fraud" entitling  
17 plaintiff to an award of punitive damages as set forth in NRS 42.005.

18 VII. JURY DEMAND

19 16. Plaintiff demands trial by jury.

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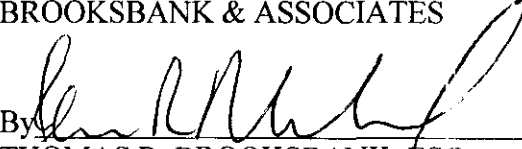
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1 WHEREFORE, Plaintiff respectfully prays that judgment be entered against the defendant  
2 as follows:

- 3 1. For the FDCPA violations, actual damages, statutory damages, costs and attorney's  
4 fees pursuant to 15 U.S.C. §1692k;
- 5 2. For the NRS 598 violations, actual damages plus costs and attorney's fees;
- 6 3. For punitive damages;
- 7 4. For such other relief as deemed appropriate by this court.

8 DATED this 28 day of February, 2006.

9 BROOKSBANK & ASSOCIATES

10   
11 By \_\_\_\_\_

12 THOMAS R. BROOKSBANK, ESQ.

13 (775) 329-5230

14 Attorney for Plaintiff  
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LAW OFFICES OF

# PATENAUDE & FELIX, A.P.C.

A PROFESSIONAL LAW CORPORATION

[X] PLEASE REPLY TO OFFICE INDICATED

[X] 4545 MURPHY CANYON RD, 3RD FL  
SAN DIEGO, CALIFORNIA 92123  
TEL (858) 244-7600 (800) 832-7675  
FAX (858) 836-0318

[ ] 213 EAST MAIN STREET  
CARNEGIE, PENNSYLVANIA 15106  
TEL (412) 429-7675 (866) 772-7675  
FAX (412) 429-7679

[ ] 1771 EAST FLAMINGO RD, STE. 112A  
LAS VEGAS, NEVADA 89119  
TEL (702) 952-2032 (800) 367-3092  
FAX (702) 992-6286

07/26/05

28880

SALLY A BOGGER  
PO BOX 389  
SILVER SPGS, NV 89429-0389

RE: BANK OF AMERICA, N. A.

Balance Due: \$9,980.67  
Account Number: 4888607002665066  
Our File Number: 2045.125

Dear SALLY A BOGGER:

Please be advised that the above-referenced debt has been assigned to this firm to initiate collection efforts regarding your delinquent outstanding balance to our client.

In the event that legal action is pursued and judgment is ultimately obtained against you, the judgment may include all court costs, prejudgment interest and attorney's fees in addition to the principal amount currently owed. If you wish to eliminate further legal action, please contact us at our Nevada office at (800) 867-3092 or our California office at (800) 832-7675.

Unless you notify us within THIRTY (30) days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within THIRTY (30) days from receiving this notice, this office will: obtain verification of the debt or obtain a copy of a judgment and mail you a copy of such judgment or verification. If you request this office in writing within THIRTY (30) days after receiving this notice, this office will provide you with the name and address of the original creditor, if different from the current creditor.

This is an attempt to collect a debt and any information obtained will be used for that purpose.

Very Truly Yours,

Raymond A. Patenaude, ESQ.

THIS COMMUNICATION IS FROM A DEBT COLLECTOR

Exhibit "A"

August 2, 2005

Farenaude & Felix, A.P.C.  
4545 Murphy Canyon Road  
Third Floor  
San Diego, CA 92123

RE: Account #4888607002665066

Dear Sirs:

This letter will serve as your legal notice under federal law that regulates the activities of collection agencies and their legal representatives:

1. You are hereby notified under provisions of **Public Law 95-109, Section 805-C. The Fair Debt Collection Practices Act** to hereby Cease and Desist in any and all attempts to collect the debt referenced above.
2. Your failure to do so will result in charges being filed against you with the state and federal regulatory agencies empowered with enforcement.
3. Since it is my position *not* to recognize and/or work with collection agencies, I will settle this matter directly with the original creditor.
4. You are hereby put on notice of the following:
  - \* Do not call me at home.
  - \* I tape my phone calls.
5. It is my policy neither to recognize nor deal with collection agencies. I intend to settle this account with the original creditor.

Sincerely,

**SECTION 805-C**

PATENAUDE & FELIX, A.P.C.  
4545 MURPHY CANYON RD.  
THIRD FLOOR / SAN DIEGO, CA 92123

Exhibit 'B'

August 2, 2005

Pateraudes Felix, A.P.C.  
4545 Murphy Canyon Road  
Third Floor  
San Diego, CA 92123

RE: Account #4888867002665066

Dear Sirs:

This letter will serve as your legal notice under federal law that regulates the activities of collection agencies and their legal representatives.

1. You are hereby notified under provisions of **Public Law 95-409, Section 806-C, The Fair Debt Collection Practices Act** to hereby Cease and Desist in any and all attempts to collect the debt referenced above.
2. Your failure to do so will result in charges being filed against you with the state and federal regulatory agencies empowered with enforcement.
3. Since it is my position not to recognize and/or work with collection agencies, I will settle this matter directly with the original creditor.
4. You are hereby put on notice of the following:  
"Do not call me at home"  
"Do not tape my phone calls."
5. It is my policy neither to recognize nor deal with collection agencies. I intend to settle this account with the original creditor.

Sincerely,





NAME: FELIX, A.P.C.  
6500 1st Ave. E.  
San Diego, CA 92123

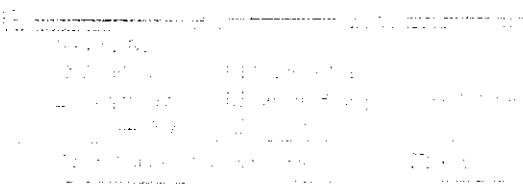


Exhibit "B"

LAW OFFICES OF

# PATENAUDE & FELIX, A.P.C.

A PROFESSIONAL LAW CORPORATION

[X] PLEASE REPLY TO OFFICE INDICATED

[X] 4545 MURPHY CANYON RD, 3RD FL  
SAN DIEGO, CALIFORNIA 92123  
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TEL (412) 429-7675 (866) 772-7675  
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[ ] 1771 EAST FLAMINGO RD, STE. 112A  
LAS VEGAS, NEVADA 89119  
TEL (702) 952-2032 (800) 867-3092  
FAX (702) 992-6286

10/27/05

7987

SALLY A BOGGER  
2785 TOIYABE ST  
# 389  
SILVER SPRINGS, NV 89429-7934

RE: BANK OF AMERICA, N.A.

Principal Amount Due: \$9,980.67  
Account Number: 4888607002665066  
Our File Number: 2045.125

Dear SALLY A BOGGER:

Pursuant to your request enclosed please find our client's documentation regarding the above referenced matter.

Please contact our office upon your review of the documents and an account representative will negotiate a payment plan to liquidate the above referenced account.

Very truly yours,

LAW OFFICE OF PATENAUDE & FELIX

By: David T. Genz  
Operations Manager

THIS COMMUNICATION IS FROM A DEBT COLLECTOR

Exhibit 'C'



1. [Illegible]

2. [Illegible]  
[Illegible]  
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12. [Illegible]  
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[Illegible]

13. [Illegible]  
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14. [Illegible]

Exhibit "D"